

**LAW OFFICES OF SHARON E. DUGGAN**

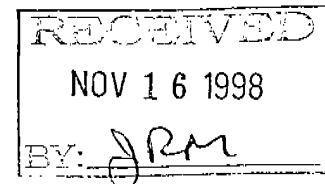
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Facsimile: By Request

November 16, 1998

BY PERSONAL DELIVERY

Mr. Richard Wilson  
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RE: Pacific Lumber Company's HCP/SYP and the Accompanying EIS/EIR

Dear Mr. Wilson and Mr. Halstead:

I have been asked to submit comments on behalf of the Environmental Protection Information Center on Volume III, Relationship of Individual THPs to the SYP/HCP.

Pacific Lumber intends to rely upon and incorporate provisions of the HCP/SYP within individual THPs. It appears from the Part H of Volume III that Pacific Lumber intends to specifically rely upon the HCP/SYP for purposes of the watercourse provisions and the cumulative impacts assessment. PL's reliance is misplaced, particularly given the lack of adequate data in the HCP/SYP and its EIS/EIR, and the inadequacy of existing rules to provide watercourse protection, evaluate and prevent cumulative adverse impacts, and ensure maximum sustained production of high quality timber products.

Under 14 CCR § 1091.2, THPs may rely upon the impact assessments in the SYP relating to watershed, fish and wildlife impacts. An EIS/EIR can be relied upon for a subsequent approval only if the significant and cumulative adverse impacts of the individual project were adequately addressed in that document. (Pub. Res. Code §21068.5; 14 CCR §15152.) Given the lack of data and analysis in the HCP/SYP and its EIS/EIR, the individual THPs will not be able to rely upon the HCP/SYP and its EIS/EIR.

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The published HCP/SYP and its EIS/EIR is inadequate in its analysis and disclosure of information. At Volume III, part H, the HCP/SYP describes the relationship of the SYP to future THPs. The striking feature of this description is there is no suggestion that future THPs

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will use (1) any of the various post approval studies that the HCP/SYP proposes for purposes of developing site specific mitigation measures, or (2) the results of the various compliance, effectiveness and trends monitoring programs to update either their impact assessments or their mitigation measures relating to these resources. The above requirements for assessment and mitigation of potential cumulative impacts are met with the information and mitigations provided in the Plan. THPs will meet the requirements for biological assessment by referencing Volume II Parts K, L, M and N and Volume IV Parts B, C, D & E in the Plan. (Vol. III, Part H, p. 7). Thus, according to the HCP/SYP, a THP proposed for a watercourse in which watershed analysis has been completed after the HCP/SYP is approved could still refer to the HCP/SYP as approved for its watershed and fish impact assessments and mitigation measures without reference to the results of the post approval studies or monitoring efforts. This does not comply with CEQA or the Forest Practice Rule § 1091.2, because so much of the impact assessment and development of specific mitigation measures is not contained in the "Plan" to which the THPs will refer.

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The HCP/SYP also falls short as a document for future THP use because it fails to provide the necessary cumulative impacts analysis in the first instance. (Whitman v. Board of Supervisors (1979) 88 Cal.App.3d 397, 408; EPIC v. Johnson (1985) 170 Cal.App.3d 604, 624-625; Friends of the Old Trees v. Department of Forestry and Fire Protection (1997) 52 Cal.App.4th 1383, 1401.) The Forest Practice Rules incorporate CEQA's definition of cumulative impacts, and require a SYP to address cumulative impacts in its fish and wildlife assessment, and its watershed assessment. (14 CCR §§1091.5 (b), 1091.6 (b).) This was not done in the HCP/SYP or its EIS/EIR. In a most fundamental sense, the documents fail to even disclose past projects and their impacts. In addition, any THP must comply with 14 CCR §912.9 and its Technical Rule Addendum No. 2, which requires Pacific Lumber to "distinguish between on-site impacts that are mitigated by the application of the Forest Practice rules and the interaction of proposed activities (which may not be significant when considered alone) with impacts of past and reasonably foreseeable future projects." (14 CCR §912.9, Technical Rule Addendum No. 2.) No such analysis of this "interaction" has been done in the HCP/SYP or its EIS/EIR, particularly as to impacts from past projects and projects downstream. Further, the rules require that not only must the location of past projects be identified and described, but the THP must also "identify and give the location of any known, continuing significant environmental problems *caused by past projects. . .*" (14 CCR §912.9, Technical Rule Addendum No. 2, Past and Future Activities, emphasis added.) Identification and evaluation of past projects and their impacts is fundamental to an analysis of cumulative impacts, yet this component is absent from the HCP/SYP and its EIS/EIR. Accordingly, any THP will necessarily need a complete cumulative impacts analysis as required by CEQA and the Forest Practice Act.

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The adequacy of any such analysis cannot be obtained through the rote recitation of the various elements of 14 CCR §912.9 and its Technical Rule Addendum No. 2, as is currently the

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practice by Pacific Lumber. There is a legion of evidence that Pacific Lumber's past and present operations cause significant and cumulative adverse impact, notwithstanding its representations to the contrary. This is most notable in the five watersheds that state agencies have identified as impacted. While Pacific Lumber references this fact in its HCP/SYP, it takes no steps to interrelate the designation by the state agencies to its practices. The watercourse in most of the watersheds in which Pacific Lumber owns substantial acreage have been placed on the EPA's 303(d) list as impaired water bodies - due to excessive sedimentation and siltation, due to, among other conduct, silvicultural activities. (See, Resolution 98-055 of State Water Resources Control Board.)

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Reliance upon the watercourse rules for future THP use is misplaced. Ten years ago the EPA refused to designate the state forest practice rules as "best management practices" (BMPs) under the Clean Water Act section 208, because, among other things, there was inadequate monitoring to determine whether the rules achieved what was intended, and even if they did, whether or not the rules were followed by the plan submitters and operators. To this day, EPA has still not certified the rules as BMPs.<sup>1</sup> (See, EPA letter July 29, 1988) Because of this, Pacific Lumber and CDF cannot rely upon the standard rules as evidence of a minimum standard of protection. In fact, any actual evaluation of Pacific Lumber's land would establish just the opposite. The HCP/SYP sets forth proposed "in lieu" practices, intended to provide different watercourse zones under certain conditions. However, these practices are still premised upon the standard rules which have not been established as an acceptable minimum. Further, these in lieu standards are based upon political, not scientific, considerations.

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Even if Pacific Lumber could show compliance with the existing forestry cumulative impact regulations, those regulations are inadequate to evaluate and prevent cumulative impacts. Several state and federal agencies have made this determination. In 1994, the Little Hoover Commission issued its report on the timber harvest review practice, determining that it failed to protect the environment from cumulative impacts. The National Marine Fisheries Service and the Environmental Protection Agency has also found the rules inadequate. (See, Letters of 10/17/97 from NMFS to CDF; 11/21/97 and 4/9/98 from EPA to Board of Forestry.) CDF admitted this public testimony before the Senate Natural Resources Committee in November 1997. Testimony from a Department of Fish and Game biologist confirmed these concerns. (See, Partial Transcript of Senate Natural Resources Hearing, 11/24/97.)

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<sup>1</sup>In the past few years, CDF has admitted that it does not have the resources to conduct the inspections required by the rules to ensure compliance with the Forest Practice Act. (See Declarations of Dean Lucke and Ross Johnson, enclosed.) There is no evidence that CDF has enhanced its resources to address this inadequacy. This is further evidence of why the existing rules, and Pacific Lumber's proposed practices, cannot be relied upon for subsequent THPs.

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Similarly, compliance with the sustained yield regulations in the Forest Practice Act will not assure long term sustained yield, because there is no guarantee that the HCP/SYP will provide "maximum sustained production of high quality timber products" (MSP). (Pub. Res. Code §4513.) The requirement to assure MSP is set forth in the court's opinion in the Redwood Coast Watersheds Alliance case, San Francisco Superior Court Case No. 932123, a copy of which is enclosed. The fact is that, much like the cumulative impact regulations, the existing sustained yield regulations are not working. This is the position of CDF as stated in memoranda from Ross Johnson to Richard Wilson. These memoranda were provided by Richard Wilson to a member of the Mendocino County Forest Advisory Committee. In the words of Ross Johnson, "[t]here is no minimum biological standard for any site, . . . [w]ith no productivity floor, no-one is going to alter what they are doing in the field." (Copies of this letter and these memoranda are enclosed.) If the SYP is not going to change operations in the field, all of Pacific Lumber's computer-generated estimates are not worth the paper they are written on. Pacific Lumber's record of violation is basis enough to not accept the projections and to admit that the SYP provisions under the rules are not capable of assuring MSP when dealing with an entity such as Pacific Lumber.

Other methodologies exist to provide MSP for THPs. These include percentage of inventory, as explained by Eric Swanson and Hans Burkhardt in the attached documents written by these gentlemen. (See, "Presentation of Eric Swanson and Hans J. Burkhardt to the Senate Select Committee on Forest Resources on January 29, 1998"; "Percentage of Inventory as a Method of Harvest Control for Achieving Sustained Yield," Eric Swanson, 2/3/91; and "Percentage of Inventory as a Method of Harvest Control For Achieving Sustained Yield and Maximum Productivity," Eric Swanson, 4/11/92, all of which are enclosed.) CDF understands this as the real threat imposed by the current logging practices of industrial timberland owners, including Pacific Lumber. The proposed regime Pacific Lumber has set out in its HCP/SYP will not achieve MSP. CDF should review its knowledge, particularly as expressed at the 1991 4555 hearing involving Mendocino County timber harvests, and in the findings it used to adopt the emergency regulations in 1991. (See "Board of Forestry Hearing, Pursuant to PRC 4555, April 2, 1991"; "Guidance for the Director"; and "Finding of Emergency and Statement of Facts," all of which are enclosed) The HCP/SYP cannot be used in subsequent THPs to established compliance with Pub. Res. Code §4513.

One example of the limitations of the rules and Pacific Lumber's approach in the HCP/SYP is illustrated by the HCP/SYP's analysis of site index - "one of the most important variables in determining yield." (Vol. III, Part F, p.2.) The HCP/SYP determined site index - a measurement of the productivity of the site to provide MSP - "from an analysis of over 160 measured site trees distributed across the ownership. This information was collected as part of an ongoing process of monitoring log quality on active timber harvest plans. Typically, five site trees were measured for every harvest unit." (Id., Part D, p.2.) Therefore, approximately 32 units (160 trees divided by 5 trees per unit) were evaluated. The HCP/SYP also reveals that

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"approximately 7% of PALCO's timberlands are covered by currently approved, active, or planned timber harvesting plan . . . (Id., Part B, p.4.) In simple terms, Pacific Lumber has estimated its productivity based upon a sampling of 32 units from 7% of its timberlands. This is not adequate because it does not evaluate the overall productivity of Pacific Lumber's lands.

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CON.

This limited analysis is insufficient because of the intensive land use operations which have occurred on Pacific Lumber timberlands in the past ten years. This intensity is also a reason why the volume projections in the HCP/SYP are invalid. Volume is a reflection of the site index. The current volume for the HCP/SYP was determined using the 1986 inventory data from Hammen Jensen and Wallen. (Id., Part D, p. 2 and Part E.) The 1986 inventory precedes in large part the significant change to intensive silviculture methods that have been utilized since the Maxxam takeover of Pacific Lumber. The volume in existence at the time of the takeover by Maxxam was the result of decades of sustainable forest practices, the type of practices that do not typically deplete site productivity. Since 1986, Pacific Lumber has engaged in intensive clearcutting, road building, and is guilty of hundreds of rule violations that evidence soil displacement. This type of conduct reduces site productivity. The volume estimates are based upon out-dated data, which does not take into account the conduct that inevitably has reduced site productivity. The site productivity is over-stated by virtue of the poor sampling of site index throughout Pacific Lumber's property. This skews the analysis for purposes of long-term sustained yield, and cannot be relied upon in subsequent THPs. It provides evidence of the very concerns put forward by Ross Johnson in his memoranda - that CDF is forced to accept Pacific Lumber's projections, without any minimum standards, and thus no assurances of MSP as required by PRC §4513.

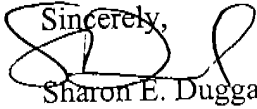
The HCP/SYP does not provide the necessary data and analysis that can be properly relied upon in any subsequent THP. It fails to evaluate cumulative impacts, and assumes without scientific basis that the watercourse practices are adequate for subsequent THPs. It also assumes yields and volumes based upon inadequate site index and inventory data. Further, it is premised upon a system of regulation that has proven over time to be ineffective and incapable of fulfilling the intent of the Forest Practice Act and the CEQA.

A remaining concern about the entire review process is that CDF should not permit Pacific Lumber to develop new information that has not been exposed for public review and analysis. This will frustrate the review process, and preclude informed decision-making.

It is worth your reading some material that recognizes the depletion and extinction that the HCP/SYP will bring if approved. (See, "The Biology of Human-Caused Extinction," Geerat J Vermeij.) Please read the enclosed article and respond to it in the context of the extinction that

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has been authorized under by CDF and carried out by Pacific Lumber. Given the lack of accurate data in the HCP/SYP, at this point the HCP/SYP should be rejected, and the EIS/EIR found lacking.

Sincerely,  
  
Sharon E. Duggan

sed.fw  
Enc.

## INDEX OF DOCUMENTS WITH COMMENT BY SHARON E. DUGGAN

1. Resolution 98-055 of State Water Resources Control Board
2. EPA Letter Dated July 29, 1988
3. Declaration of Dean Lucke , September 16, 1997
4. Declaration of Ross Johnson, September 6, 1996
5. Declaration of Ross Johnson, October 3, 1996
6. Declaration of Ross Johnson, June 26, 1997
7. Excerpts Little Hoover Commission Report: "Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs," June 1994
8. NMFS Letter Dated 10/17/97 CDF
9. EPA Letter Dated 11/21/97 to Board of Forestry
10. EPA Letter Dated 4/9/98 to Board of Forestry
11. Partial Transcript of Senate Natural Resources Hearing, 11/24/97
12. Statement of Decision Re Causes of Action 1-7, Redwood Coast Watersheds Alliance v. California State Board of Forestry, San Francisco Superior Court Case No. 932123
13. Three Undated Memoranda from Ross Johnson to Richard Wilson
14. "Presentation of Eric Swanson and Hans J. Burkhardt to the Senate Select Committee on Forest Resources on January 29, 1998"
15. "Percentage of Inventory as a Method of Harvest Control for Achieving Sustained Yield," Eric Swanson, 2/3/91
16. "Percentage of Inventory as a Method of Harvest Control For Achieving Sustained Yield and Maximum Productivity," Eric Swanson, 4/11/92
17. "Board of Forestry Hearing, Pursuant to PRC 4555, April 2, 1991"
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20. "The Biology of Human-Caused Extinction," Geerat J Vermeij